DISMISSAL PROCEDURES

An overview of Country Regulations

FIABILIS
CONSULTING GROUP

#ActingBeyondTheDeal

Table of contents

Introduction. A comparative View of Dimissal in the Pandemic Era

This analysis is based on the direct observation that as experts specialized in the optimization of labor costs we have had to live in recent months marked by the pandemic phenomenon that has affected the whole world.

In each of the European markets where we operate and where the Covid-19 has caused a different economic impact, we have helped our customers in the management of special government measures to protect employment in regard to our field of action.

The report we propose therefore covers 5 of the European markets in which we operate: Belgium, France, Italy, Poland and Spain.
Without claiming to be exhaustive, the aim of this report is rather that of providing a sketchy outline of how dismissal takes place in the legal systems investigated, focusing on collective dismissal. Aspects such as procedural requirements, the actors involved, mandatory or voluntary trade union consultation, and the formal procedures to comply with when initiating dismissal will be examined.

Exceptions occurring at the national level will also be investigated, in that some special provisions are in place covering some workers, thus limiting the employer's power to terminate their contract. In some cases, the costs related to dismissal procedures will be examined.
The analysis has highlighted an aspect that is common to all the legal frameworks considered; special measures were laid down by national governments to limit the effect of COVID-19 on employment. This is because, following virus spread and business closures, many employers resorted to dismissal to reduce the workforce and the entailing labour costs.

Since we were immersed in this situation like all European companies, we have had the opportunity to examine the dismissal plan regulations arising from reorganisation and/or profitability obligations. And when a dismissal plan is driven by one of these two reasons and therefore by the desire to maintain a business activity and the employment of the workforce, in parallel of managing dismissal plan we offer our advice to activate and manage less invasive solutions at corporate and social level.

Examples of these complementary solutions are the inclusion of possible innovations in salary packages, increased efficiency with an

adequate and more precise application of the local normative, cost controlling in right calculation of all small entries in payroll and social declaration, competitiveness in using all incentives to get the standard price as low as possible.

Because, even if dismissal plan is sometimes 100% necessary to preserve a group or to maintain profitability, it is just one – very technical – part of a proactive management strategy.
At the same time, many other Hr Directions' financial leverages should be considered and here we are to offer companies this integrated approach to a European level.

Fiabilis Consulting Group

I. DISMISSAL PROCEDURES IN BELGIUM

1. Collective Dismissal in Belgium

In Belgian legislation, the rules governing collective dismissals can be found in both legal and contractual sources. Furthermore, special provisions apply when the worker to be terminated is on a fixed-term employment contract. The date of employment is also relevant, as different rules are in place whether a worker was hired before or after 1 January 2014. It might be possible that the employment contract includes some terms agreed upon by the parties concerning length of service and termination of employment.

Collective dismissals take place when a given number of workers from the same company or production unit are terminated over a period of at least 60 days, for reasons unrelated to workers themselves. The number varies depending on company size (companies are regarded as "technical business units" in Belgian company law). Specific procedures must be complied with when starting collective dismissals, which refer to negotiations with unions and the obligation to inform public employment services. Consultation with trade unions is useful because they might provide advice on staff downsizing and the relevant steps to be taken. If a number of conditions established by law arise, the employer must also pay a special allowance to workers made redundant.

1.2. Minimum Number of Workers

By considering the number of staff working at the company in the same period in the previous year, applicable collective agreements determine the percentage by which it is possible to regard a dismissal as a collective one.

Average number of employees working in the company ("technical business unit") during the previous calendar year	Minimum number of employees required for a collective dismissal within the framework of the:	
	CBA n. 24 (Information - Consultation)	**CBA n. 10** (to pay compensation)
20-59 employees	10 employees	6 employees
60-99 employees	10 employees	10%
100-299 employees	10%	10%
300 employees and more	30 employees	10%

1.3. Negotiations with Trade Unions

When an employer wants to make workers redundant, a strict procedure must be complied with, based on the following steps:

- informing the works council in writing about the willingness to start a collective dismissal. The statement must specify the reasons for the dismissal, the criteria laid down to select the workers to be made redundant and the period during which collective dismissals will take place. Subsequently, relevant authorities that are in charge of monitoring the process must also be notified this decision;

- informing and consulting with workers' representatives, in order to give rise to constructive dialogue enabling them to give advice and make proposals (e.g. implementing measures helping workers to find another job within the same company or training them for future employment opportunities). The employer is under the obligation to go through all the questions and deal with all the proposals put forward by the unions. They must also give evidence that they have fulfilled the obligation referred to before, providing minutes of the meeting arranged to discuss the collective dismissal.

1.4. The End of the Dismissal Procedures and the Information Obligations

In order to formalize the employer's decision to start a collective dismissal, the relevant authorities that are in charge of monitoring the dismissal procedures must be informed, along with workers' representatives and the workers concerned. A legal representative appointed by the company must deal with all the relevant **procedures**

and notify the dismissal to those concerned. They can also be given power of attorney in order to act on behalf of the company. Even if the dismissed staff remains in employment during the notice period, the employer will always inform the relevant institutions through a registered letter or in writing via a bailiff (the starting date and the duration of the notice period must be detailed). In the event of summary dismissal, the employer must not comply with any formalities, though it is advisable that they keep written evidence of the date of the dismissal, so they can motivate this decision and prove that the relevant allowance has been paid.

2. The Notice Period

After making the worker redundant, the employer can decide to terminate their contract, not allowing them to stay on at work, or to arrange a notice period after which the contract ends. In the first case, the worker is entitled to severance pay and to an allowance in lieu of the notice period. In the second case, the dismissed worker carries on working until the end of the notice period. When a worker is terminated and is given a notice period, they will be paid their remuneration and benefits as laid down in the employment contract. Conversely, they will receive the payment in lieu of notice, which will need to include all the benefits laid down in the employment contract (e.g. end-of-year bonuses, commissions, private use of the company car, company insurance, hospitalisation insurance, luncheon tickets).

Serving a notice period

The dismissed employee continues to work in the company during the entire notice period

Immediate termination of the employment contract

Immediate departure of the dismissed employee with a severance pay corresponding to the legal notice period

3. Payment in lieu of Notice

When a worker is summarily dismissed and will be paid an allowance as an indemnity, this payment is made in lieu of notice and is calculated considering their annual gross salary multiplied by 13.92. The gross salary is calculated on the variable average of the prior 12 months and includes all benefits paid by the employer (save for expense allowances).

4. Dismissal and Duration of the Employment Contract: Some Differences

Some procedural differences exist depending on whether the employment contract was concluded prior to or after 1 January 2014. For contracts concluded after that date, the notice period must be expressed in weeks and considers workers' seniority on an exclusive basis (with the latter that is calculated from the date on which the worker started employment). If the employment contract was concluded before 1 January 2014, a special 'transition rule' applies, pursuant to which the notice period consists of two parts:

- the first part through which entitlements are calculated until 31 December 2013;
- the second part considers entitlements starting from 1 January 2014.

The duration of the employment contract bears relevance when calculating the notice period. For fixed-term contracts lasting up to 6 months, the statutory notice period applies in the event of dismissal, with the employer who can terminate employment only when the first contract is in force. For contracts longer than 6 months, in the event of dismissal the employer must pay an indemnity equal to the remuneration due until the end of the contract, which in any case cannot be higher than the maximum amount laid down by law. Summary dismissal is always possible, whether the contract is an open-ended or a fixed-term one.

Termination by serving a notice period

Employment contract for an indefinite duration:

- Started since 1 January 2014: the notice period is **expressed in weeks** and only depends on the **employee's seniority** (the start date of the employment)
- Started before 1 January 2014: a specific transitional rule applies. This transitional rule provides that the total notice period consists of 2 parts: a first part to **compensate the seniority up to** (and including) **31 December 2013** and a second part **to compensate the seniority as of 1 January 2014**

Employment contract for a definite duration:

- During the first half of the duration of the contract (capped at a maximum of six months): in case of dismissal, the normal and legal notice period applies. The employer can only terminate the contract during the first contract, also in case of successive contracts for a definite duration
- During the second half of the duration of the contract: in case of dismissal, the employer must pay an indemnity which will be equal to the remuneration due up to the end of the contract (but with respect to a maximum as described by law)

Immediate termination of the employment contract

Possible in both cases, a contract for an indefinite and a definite duration

An indemnity in lieu of notice will have to be paid corresponding with the legal notice period

The indemnity in lieu of notice must include all the benefits to which the employee is entitled to according to his employment contract: end-of-year premium, commissions, private use of a company car, group insurance, hospitalization insurance, meal vouchers etc.

5. Absence from Work, Dismissal and COVID-19

During the COVID-19 emergency, companies operating in Belgium were given the opportunity to suspend the employment contracts with their workers temporarily. Employers were also given the opportunity to dismiss workers, informing them about their notice period or awarding them the payment in lieu of notice and severance pay. Workers could be dismissed while they were still away from work, i.e. during business suspension. Pursuant to Belgian law, the employment contract can be terminated also during work suspension (e.g. during a period of disease and temporary unemployment linked to COVID-19). Yet absence from work caused by COVID-19 cannot be regarded as a just cause for dismissal, so the employer making workers redundant during this emergency will face sanctions for wrongful dismissal. Nevertheless, the employer could claim that the dismissal was due to economic reasons, as a result of the business suspension due to the health emergency. At any rate, it might be important to remember that in the event of termination of the employment contract and the provision of the notice period:

a) the notice period will occur during a period of unemployment (i.e. when workers stay at home because of the virus);
b) the notice period will start when the worker returns to work, i.e. after the worker was temporarily unemployed for economic reasons.

Absence from work due to COVID-19	Termination of the employment contract for reasons existing prior to the COVID-19 outbreak
It is not ground for dismissal	It is possible to terminate the employee for economic reasons

Exceptions to these rules might be laid down in provisions established at the sectoral level, when the workers who face dismissal are protected by special status (e.g. they are members of the works council or they are prevention consultants) or when specific company regulations are in place.

The provisions referred to before do not apply in the following cases:
Sector-specific regulations are in place
Employees enjoy special status or are covered by special legislation
The worker to be terminated is member of a works council/an OHS inspector
The worker is temporarily unemployed

II. DISMISSAL PROCEDURES IN FRANCE

1. The Dismissal for Economic Reasons in France

In France, the dismissals for economic reasons – both collective and individual ones – are different from those concerning workers themselves. Notwithstanding the need to provide a *cause réelle et sérieuse* (a real and serious cause), dismissals can take place when there are reasons not related to workers themselves but to the abolition or the change of a post, or to other legally-defined economic reasons (e.g. economic hardship, technological changes, difficulties faced by the employer due to economic reasons or business interruption). In this regard, two conditions need to be met for the dismissal to take place: a) the economic reasons must be assessed by all the companies making up the group operating in the same sector at the national level b) if the dismissal procedures involve more than 10 workers and take place within 30 days, an 'occupational plan' must be set up ('*Plan de sauvegarde de l'emploi*' – henceforth: 'PSE').

2. Economic Reasons

Economic difficulties arise when the company reports a loss of market share, high levels of debt or deficit – to be calculated considering company size – but not in the event of a slight decrease of the turnover or when the employer aims to save money. The economic difficulties which might constitute ground for dismissal concern a drop of the turnover – to be assessed comparing the profits reported in the same period in the previous year – and lasting: 1 trimester (i.e. 3 months) for companies hiring less than 11 workers; 2 consecutive trimesters for companies hiring between 11 and 49 workers; 3 consecutive trimesters for companies hiring between 50 and 299 workers; 4 consecutive trimesters for companies with more than 300 workers. The company is also said to face economic difficulties in the event of significant operational losses, reduced cash flow or low Earnings Before Interest, Taxes, Depreciation and Amortization – EBITDA
(though no detailed information is provided by relevant legislation).

3. The Risk of Lower Competitiveness

It is also possible to initiate dismissal procedures when the company, while not being affected by any financial difficulties, is in need of starting re-organisation in order to ensure its competitiveness. In that case, the employer must prove that competitiveness is at stake and that the measures considered are those necessary to solve the problem.

4. The Identification of the Dismissal Criteria

Three conditions are needed to commence dismissal procedures. Firstly, the employer must take all the necessary measures to train staff in order to help them keep their job, particularly if the economic reasons motivating the dismissal concern changes to core markets. Secondly, an attempt should be made to employ workers facing dismissal within the same group or society, offering them any job they can perform. Thirdly, the employer is under the obligation to determine the order in which staff will be terminated within the same job category. This choice must be made based on objective criteria (e.g. age, family responsibilities, seniority, disability, skills) and must not be left to the employer's discretion.

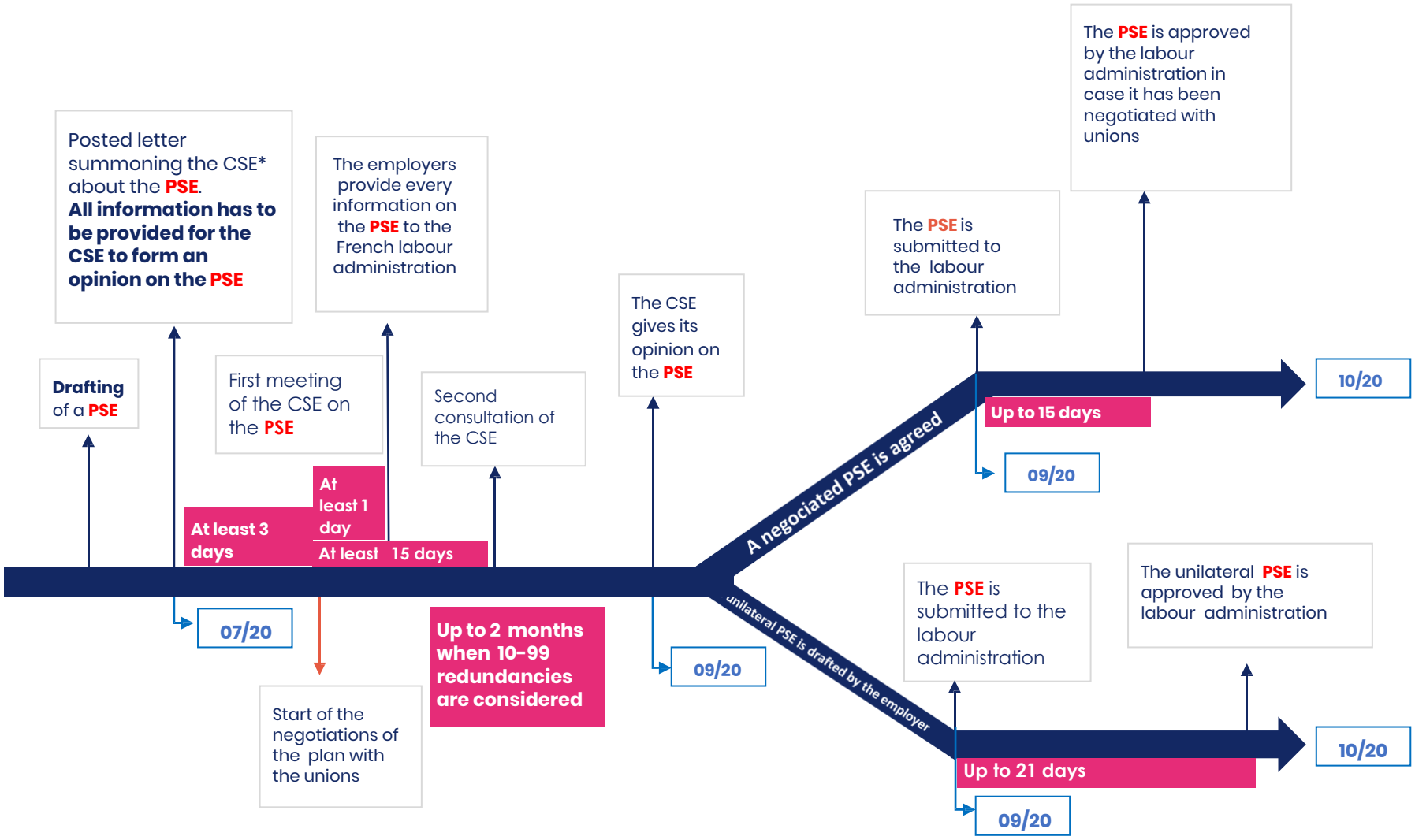
5. The Procedures for Initiating Dismissal for Economic Reasons

The procedures concerning the dismissal for economic reasons are detailed below:

a) individual dismissals for economic reasons and dismissals for economic reasons regarding less than 10 salaried employees within a 30-day timeframe: they follow the same procedures, although complying with different time schedules and an obligation exists to consult employees' representatives as far as the collective dismissal plan (if any) is concerned.

b) collective dismissals for economic reasons for 10 or more salaried employees, which should take place within a 30-day timeframe.

5.1. Phase 1 (the Collective One): Information, Consultation and Negotiation of the Dismissal Procedures



* Please note that a company collective agreement can set other provisions with longer duration.
Information of the contemplated plan shall also be sent to the Sector National Commission, which can take part in the establishment of the plan if asked by the company

Phase 1 – which is a collective one – takes place after drawing up PSE and concerns the information and consultation procedures with trade unions and negotiations concerning PSE. It is important to stress that negotiations with the unions can start prior to consultation with the Social and Economic Committee (*Comité Social et économique*, henceforth the CSE), which gives an opinion on the company's economic status and PSE. Should that be the case, the 2-month deadline, within which the CSE must provide its opinion, does not start immediately, so employees' representatives can still halt the dismissal procedures. The CSE can be assisted by professionals and, until it does not supply its opinion – within 2 months if there are less than 100 workers involved – the employer cannot move forward with the next steps of the termination of employment. The employer must submit the following documentation to both employee representatives and the management:

1) A written statement outlining the economic situation and in relation to:
   - the group;
   - the current economic situation in the relevant sector;
   - company organisation;
   - the measures already in place to improve the situation to contain the impact on employment;
   - the objectives sought with PSE.

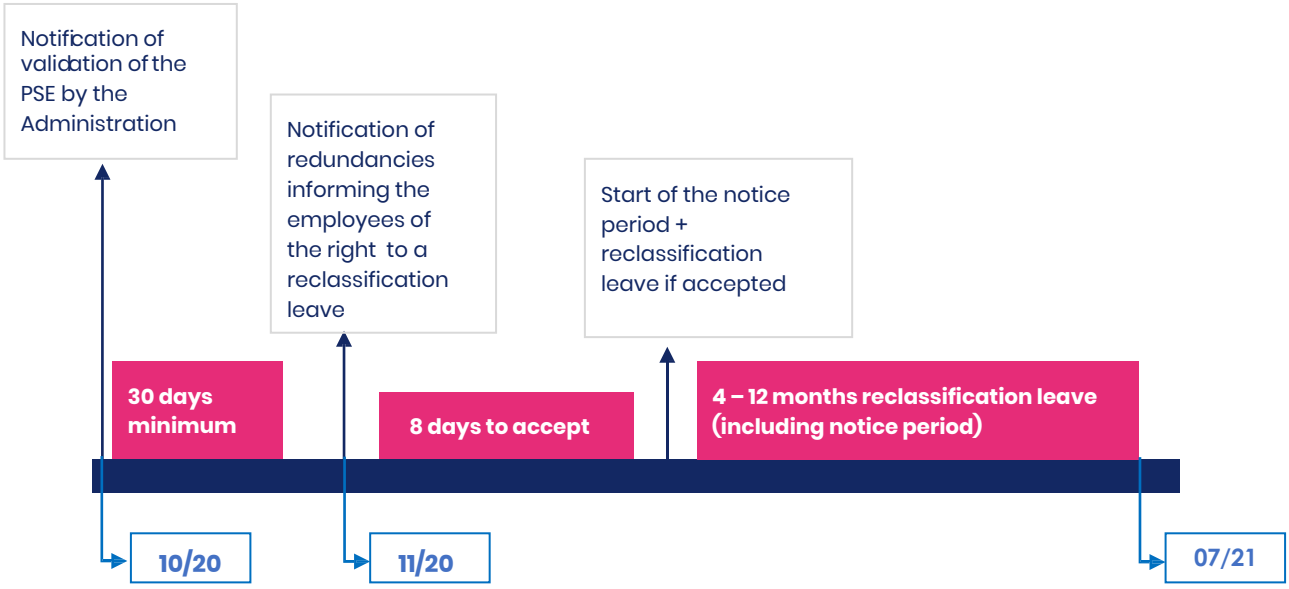
2) A written statement outlining the plan or a project concerning PSE to be negotiated with trade unions, which details:
   - information about staff, e.g. no. of workers to be dismissed, the categories concerned and the criteria adopted to select those to be terminated. Reference should also be made to those willing to volunteer, if any.
   - all the measures put in place by the employer to prevent job losses;
   - the measures put in place to re-assign staff to other positions and avoid their termination of employment;
   - aspects funded through severance pay (e.g. training, extra benefits).

In order to be valid, the agreement concerning dismissals should be concluded by trade unions representing at least 50% of votes obtained during the last elections at the company.

5.2. Possible Involvement of the Directorate-General for Enterprises (DIRECCTE)

If an agreement exists with trade unions, DIRECCTE control is only formal. However, if the group submits a plan drafted unilaterally, DIRECCTE is under the obligation to go through PSE and assesses whether sufficient measures have been put in place in relation to the group's wealth. The individual phase cannot take place until this control has been carried out. PSE can be also set up in the context of the COVID-19 emergency. Yet it must be stressed that the Ministry of Labour has stated that DIRECCTE would closely check these plans to prevent the consequences on employment, especially if the company benefitted from financial support during the pandemic.

5.3. Phase2 (The Individual One): Redundancies (10 or more employees)



During this second phase it bears stressing that three steps must be made if redundancies concern some protected categories of workers (e.g. trade unions, CSE representatives): a preliminary interview, a special opinion provided by CSE on their termination; an authorisation released by the Labour Inspectorate, which will examine the whole process. The decision about redundancy should be made within 2 months, though this deadline has been suspended until the end of the health emergency resulting from COVID-19.

6. Necessary Occupational Support

There exist four types of support: financial, legal and operational support, and outplacement:

- the financial support entails that, prior to starting dismissal procedures, information should be collected concerning the group's or the society's financial situation, which will require making use of internal resources. Therefore, a model should be provided outlining the structure and the level of the information needed;

- the legal support refers to the fact that all documents and the process related to collective redundancies will be examined by DIRECCTE. If the legal requirements are not fulfilled, the company might have its request rejected, so the whole dismissal procedures should be restarted. If DIRECCTE approves the request, its decision might be challenged by trade unions, by the CSE or the workers concerned in the following two months. If the plan is nullified, all notifications concerning plan execution are made null and void, too. All the documents concerning each stage of the procedure can be challenged before the Employment Tribunal within 12 months and the economic reasons or the procedures put in place can be questioned. The procedure, as well as the documents, must be drafted or reviewed by a legal consultant;

- the operational support is about the need to have a local (or at least someone speaking French) handling the collective phase, i.e. attending CSE meetings and negotiating with trade unions. The legal consultant can provide assistance and attend negotiations but cannot represent the employer during this stage. Some internal resources should be also made available for each stage (e.g. outplacement, letters concerning termination of employment, preliminary interviews in the event of protected categories). Ideally, there should be at least one person from local human resources to work on the plan. Relying on someone who is trusted by unions and staff is important to ensure the plan runs properly;

- as for outplacement, it might be useful to retain the services of a specialised company to assist staff when looking for a job.

7. Dismissing during COVID-19

Despite the Ministry of Labour issued a number of statements specifying that no dismissal would take place in this period because of COVID-19, no legislative measures have been put in place in this

connection, so collective redundancies are still possible today. However, as pointed out before (see par. 2.8.3.) the instructions provided by the Ministry of Labour to the bodies tasked with monitoring PSEs must be very strict in relation to the procedures and the measures adopted. In this sense, workers who are reported to be at low risk in terms of COVID-19 infection can be dismissed, provided that the employer explains why the dismissal is needed, even after the support provided by the state.

8. Dismissing in France: a Cost Analysis

The costs related to dismissals concern:

- training, which always applies: between € 2,500 and € 10,000, depending on the training provided when in employment;
- support to start a new business, which always applies: between € 2,500 and € 15,000 (€ 4,000 per worker, on average);
- outplacement services, which applies in 95% of cases. This cost does not apply if employers can manage these tasks on their own, i.e. if internal staff is given this assignment: between € 5,000 and € 10,000 per worker, depending on conditions, duration etc.;
- quick bonuses for new jobs: some € 1,000 per employee when implemented;
- monetary benefits to temporarily supplement the lower remuneration received when starting a new job: between € 100 and € 200 per month from 6 to 12 months;
- financial support for mobility (if the new job requires one to relocate);additional Termination Bonus (it varies and is usually requested by trade unions. DIRECCTE would never seek this bonus, as priority would be given to allocating more resources for longer training).

Consequently, an average of € 20,000/€ 25,000 is needed for each worker, to which severance pay should be added. Evidently, this is just an estimate, in that the real cost rests on negotiations with trade unions and the group's financial situation.

9. What is the Best Strategy?

In order to put forward an effective strategy to manage dismissals, negotiations should be entered into when trade unions are still present in the company, acting unilaterally only if consultation is not successful. This aspect will be verified by DIRECCTE. The four steps to deal with when starting dismissal procedures are illustrated below :

- collecting all the necessary information on the company's current financial situation and on the categories of staff to be dismissed; drawing up the statements to be sent to those concerned;
- defining the start of negotiations and the budget to be included in PSE;
- defining a timeframe, whether or not negotiations are entered into;
- contacting DIRECCTE informally, to make it aware of the current situation and the actions needed.

III. DISMISSAL PROCEDURES IN SPAIN

1. Relevant legislation

In Spain's legislation, dismissals must always be motivated by fair reasons. Specifically, there are four types of dismissals in Spain, namely:

- collective dismissal (Article 51 of WS);
- dismissal for objective reasons (Articles 52 and 53 of WS);
- disciplinary dismissal (Articles 54, 55 and 56 of the Workers' Statute, henceforth: WS);
- dismissal of workers in managerial positions (Royal Decree no. 1382 of 1 August 1985).

2. Collective Dismissal

Collective dismissals occur when employment is terminated because of certified economic, technical, organisational and productive reasons affecting a number of workers, namely:

- at least 10 employees in companies with less than 100 workers;
- at least 10% of employees for companies employing between 100 and 200 employees;
- at least 30 employees for companies with more than 300 white-collar workers/workers.

Number of Workers at the Company	**Minimum number of workers required defining a collective dismissal (over a period of 90 days)**
Less than 100 workers	10 workers
Between 100 and 299 workers	10%
More than 300 workers	30 workers

2.1. Criteria and Requirements

Nevertheless, in the event of collective dismissals, it is not sufficient to give evidence of the reasons referred to above, as proportionality must exist between the company's economic situation and the entity

of the collective dismissal, as well as a relationship between the presumed reason and the workers which will be dismissed (Ruling of the Spanish Supreme Court of 26 March 2014).

Criteria for the Collective Dismissal to be Fair		
Reason (economic, technical, organisational and productive reasons)	Proportionality between the premised reason and the number of people being dismissed	Relationship between the reason and the workers who will be dismissed

2.2. Procedures

Under Spanish legislation, the employer is under the obligation to enter into negotiations with workers lasting between 15 and 30 days, depending on the number of people working at the company. In the event of unsuccessful negotiations, the employer can bring the employment contract to an end on an individual basis. Should this be the case, severance pay will be equal to 20 days' wage for each year of employment.
At this stage, it is important for the company to comply with the formal procedures related to consultation (e.g. informing workers in writing, with the communication that needs to contain some essential aspects, like the reason for dismissal and the number of workers facing dismissal) and that negotiation between the parties are entered into in good faith.

3. Dismissal for Objective Reasons

The dismissal for objective reasons (Article 52 and 53 of WS) takes place when a number of legal reasons arise affecting the employer's interests but are not determined by workers' fault. These legal reasons include:

a) workers' inability to work, which was either known or arose following recruitment;
b) workers' failure to adapt to changes taking place at work;
c) economic, technical, organisational or productive reasons.

It might be worth stressing that a) cannot be challenged if the worker has successfully completed the trial period. Furthermore, b) cannot be claimed if the company places workers on shorter hours to avoid redundancies (*Expediente de regulación temporal de empleo – ERTE*)

or if the worker's contract has been suspended as a result of the COVID-19 health emergency.

3.1. Formal Requirements

In order for dismissal for objective reasons to be fair: a) workers' must be notified in writing, with the communication which must include the reason and the dismissal date b) workers must be entitled to severance pay equal to 20 days' wage for each year of employment (up to a maximum of 12 months) c) 15 days' notice must be provided d) workers must be given 6 hours per week to look for a new job.

3.2. Procedures for Challenging the Employer's Decision

Following notification of the dismissal, and if no agreement has been reached, workers can challenge the employer's decision within 20 days. The parties are under the obligation to make an attempt at mediation, which takes place in the regional public office. When no agreement is reached, workers can bring the employer before so-called 'social' tribunals. The tribunal can hand down a ruling through which the dismissal is regarded as fair, unfair or null and void.

4. Disciplinary Dismissal

Disciplinary dismissals – Articles 54, 55 and 56 of WS – must always be based on the worker's serious misconduct. Examples of such misconduct include:

- poor performance;
- loss of trust;
- misbehaviour.

4.1. Formal Requirements

In order to start disciplinary dismissals, some formal requirements must be complied with. Specifically, the dismissal must be notified to the worker in writing and the communication must indicate the legal reason for the dismissal and the date on which employment will be terminated. However, it bears stressing that further formal requirements must be met if the employee facing the dismissal serves as a workers legal representative or as a union member.

4.2. Procedures for Challenging the Employer's Decision

Following notification of the dismissal – and if no agreement has been reached – workers can challenge the employer's decision within 20 days. The parties are under the obligation to make an attempt at mediation, which takes place in the regional public office. When no agreement is reached, workers can bring the employer before so-called 'social' tribunals. The tribunal can hand down a ruling through which the dismissal is regarded as fair, unfair or null and void.

4.3. Fair Dismissal

The dismissal is regarded as fair when the reasons motivating it – which are detailed in the employer's written communication – are properly demonstrated, the effective date of termination is complied with and no right to compensation can be claimed.

4.4. Unfair Dismissal

Unfair dismissal takes place when the reason justifying it was not motivated or when formal requirements have not been dealt with properly. In this case, the employer can either reinstate the worker, paying them back pay for the period they were dismissed, or terminate the employment relationship awarding the workerseverance pay. It is up for the latter to make this choice if he serves as a workers legal representative or as a union member. Severance pay is calculated considering one's length of service, and is equal to 33 days' wage for each year of employment, save for the period prior to 12 February 2012, during which severance pay amounts to 45 days' wage for each year in employment.
Spanish legislation provides a maximum amount for severance pay, viz. 720 days' wage (or 24 months) or 42 months, the latter applying in the period prior to 12 February 2012. Those reaching the number of days referred to above will not be entitled to extra payment.

4.5. Dismissal which is Null and Void

The dismissal can be declared null and void by the employment tribunal in the following cases:

- when fundamental rights have been violated;
- when discrimination takes place;
- when the dismissal occurs when the worker enjoys some special protection, e.g. they are on parental leave, they are on leave to assist a family member, they are in their gestation period or they

face a disease as a result of pregnancy or childbirth.

Workers cannot be terminated in the 9 months following the start of one of the conditions referred to above. In the event of a dismissal which is declared null and void, workers will be reinstated and will be entitled to back pay for the period they did not work.

5. Summary Dismissal of Workers in Managerial Positions

This special type of dismissal – which is governed by Royal Decree no. 1382 of 1 August 1985 –concerns senior managers. Under this provision, no reasons must be provided to terminate the employment relationship of these workers, though severance pay must be paid just the same. Specifically, the amount of severance pay is detailed in the employment contract. Otherwise, the worker will be entitled to severance pay equal to 7 days' remuneration for each year of employment, up to a maximum of 6 months. The notice period is usually of 3 months, or 6 months when agreed upon by the parties.

6. Analysis and Short comings in the COVID-19 Emergency

Some special provisions have been adopted in Spain to deal with the COVID-19 health emergency. Specifically, during the health emergency those companies which requested the suspension of the employment relationship could not terminate workers for economic, technical, organisational and productive reasons, or for force majeure. As already pointed out in par. 3, these reasons cannot be claimed if workers have been placed on shorter hours to avoid redundancies (i.e. ERTE) so making staff redundant in this period would haveamounted to unfair dismissal. Furthermore, as of 14 March 2020, the deadlines concerning compliance with administrative and procedural obligations were suspended.

7. Opinion on National Legislation

As already stressed in the previous paragraphs, a number of aspects must be considered in the event of dismissal in Spain, viz.:

- the number of workers to be made redundant against the total number of employees;
- the nature of the employment relationship (see par. 5);
- company information in relation to COVID-19 special provisions;
- worker employment status, i.e. whether he is a union member or a workers legal representative.

It is also important to know whether workers enjoy special protection (due to family reasons, which might make the dismissal unfair). Finally, some collective agreements might regulate dismissal through special provisions.

8. Possible Developments related to Procedures

1) In the event of disciplinary dismissal, the employer must provide the reason for terminating the employment relationship. Otherwise, the dismissal will be declared unfair.

2) In the event of dismissal for objective reasons, the employer must provide the worker with severance pay (equal to 20 days' wage for each year of employment), yet a legal procedure must support this dismissal. Otherwise, the worker can challenge the employer's decision in court and the tribunal can increase compensation.

3) In the event of summary dismissal concerning senior managers, the contract is usually terminated for objective reasons. However, the company must pay the worker severance pay (33 or 45 days' wage for each year of employment) in the event of unfair dismissal, so they cannot challenge them in court. It is advisable to conclude a confidentiality agreement.

At any rate, workers are entitled to back pay for the period they did not work because of the dismissal.

9. Cost Estimation in the event of Dismissal

The cost of dismissal depends on a number of reasons, among which are the legal procedure implemented and the decision of the tribunal. In this sense, the Board of the Judicial Branch (*Consejo General del Poder Judicial*) provides the opportunity to simulate the calculation of the severance pay workers are entitled to. Furthermore, the amount of severance pay must consider a number of remuneration items (e.g. bonuses, extra pay, and company car).

The income corresponding to the minimum amount of severance pay laid down by law (20, 33 or 45 days) is not taxable if it is lower than € 180.000. As for social security contributions, it is down to the employer to pay social security contributions for the amount of money higher than severance pay.

IV. DISMISSAL PROCEDURES IN ITALY

1. Provisions Governing Dismissals: an Overview

Currently, special provisions regulate individual and collectivedismissals in Italy, even though the rules governing the former were originally laid down in Italy's Civil Code. In this respect, Article 2118 of the Civil Code specifies that "the contracting parties can withdraw from the open-ended employment contract by giving notice according to the procedures and the time-limits laid down by law or according to fairness". However, Article 2119 of the Civil Code establishes that each contracting party can terminate the contract, be it of a definite or an indefinite period, "if circumstances arisepreventing continuation of the employment relationship, even on a temporary basis" (i.e. just cause dismissal).
Law n. 604/1966 determines that, in order to be fair, the individual dismissal of a salaried worker must be preceded by notice, must comply with some formal requirements – i.e. the decision must be communicated in writing – and must be motivated by justified reasons (either 'subjective' or objective reasons), the validity of which can be challenged by workers in court. Subjective justified reasons include the worker's breach of a contractual obligation that affects the relationship of trust existing between the parties (i.e. dismissal for disciplinary reasons). Objective justifications for dismissal include organisational and economic reasons which prevent continuation of the employment relationship. Collective dismissals are governed by Law no. 223/1991 establishing special procedural and formalrequirements in order for the termination of the employment relationship to be lawful.

1.1. Article 18 of Law no. 300/1970

Article 18 of Law no. 300 of 20 May 1979, which is most commonly known as the 'Workers' Statute', defines the scope of application of the provisions contained therein in relation to the protection laid down for the worker who has been unfairly dismissed. Originally, in the event of unfair dismissal, the law obliged the employer to reinstate the worker and to pay them compensation or an amount of money in lieu of the reinstatement. Specifically, this applied to the employer – be he an entrepreneur or not – who employs more than 15 workers – or more than 5 workers if he is a farmer – in any place of business,

establishment, branch, office or autonomous unit where the dismissal took place. The same provision also applied to the employer – be he an entrepreneur or not – who employs more than 15 workers – or more than 5 workers in the case of farms – within the same municipality, also in the event that a lower number of staff is employed in each production unit when considered individually. Finally, this rule always applies when the employer has more than 60 workers.

In companies employing the number of workers referred to above, neither the employment relationship nor payment of social security contributions is discontinued in the event of unfair dismissal.

Consequently, once the unfair nature of the dismissal has been established, the employer will be required: a) to reinstate the worker b) to pay compensation equal to the remuneration due to the worker from the day of the dismissal until his reinstatement (which cannot be lower than 5 months' pay) c) to pay social security contributions for the period between the worker's dismissal and reinstatement. If the worker does not want to return to work, he can ask to be paid an indemnity in lieu, which is equal to 15 months' pay. Relevant authorities must be informed about this decision within 30 days of the date the ruling was lodged.

In 2012, Article 18 of the Workers' Statute was amended by Law no. 92/2012, which limits the right to reinstatement in the event of unfair dismissal. In some cases, reinstatement has been supplemented, or even replaced, by a complex compensation system, which applies depending on the reason making dismissal null and void. Under Law no. 92/2012, four different sanctions can be identified, which apply to the employer depending on the seriousness of the infringement related to the unfair dismissal:

a) reinstatement – full protection (the employment relationship is restored, the employee is reinstated and full compensation is paid for the damage suffered);

b) reinstatement – minimum protection (the employment relationship is restored, the employee is reinstated, but compensation is lower than that paid in the previous case as a maximum threshold applies to it);

c) compensation – full protection (the worker is paid monetary compensation);

d) compensation – minimum protection (the worker is paid monetary compensation, but a maximum threshold applies to it).

1.2. Legislative Decree no. 23/2015

Legislative Decree no. 23/2015 (so-called Jobs Act) reviews the protection provided in the event of unfair dismissal for workers hired after 7 March 2015. The employer is still under the obligation to

motivate individual dismissal, supplying evidence that the decision is objectively or subjectively justified (Law no. 604/1966). However, and irrespective of whether the dismissal resulted from economic or disciplinary reasons, employers are required to pay compensation should the dismissal be declared unfair. It is no longer for the tribunal to define the amount of money workers are entitled to, as now compensation is calculated based on the dismissed worker's length of service. Reinstatement still applies in the event of a discriminatory dismissal or a dismissal which is null and void, or for disciplinary dismissals in which no evidence was given of the reasons claimed by the employer. Following Ruling no. 194/2018 of Italy's Constitutional Court, competence was restored to the tribunal to calculate compensation in the event of unfair dismissal, i.e. between 6 and 36 months' pay.

1.3. Dismissal in Companies with less than 15 Workers

Article 8 of Law no. 604/1966 applies to companies with less than 15 employees and sets forth that the employment relationship and payment of social security contributions must be discontinued also in the event of unfair dismissal. After establishing the unfair nature of the dismissal, the tribunal will give the employer the opportunity: to reinstate the worker within three days of the delivery of the ruling; to pay the former employee compensation worth between 2.5 and 6 months' pay. Compensation can be increased to 10 months' or 14 months' pay for workers with at least 10 years' or 20 years' service, respectively). Compensation is calculated based on length of service, company size and contracting party behaviour. To sum up, 'real protection' entails reinstatement, as the employment relationship is not interrupted. 'Mandatory protection' implies rehiring, i.e. a new contract is concluded. In the latter case, previous length of service is not taken into consideration, so the worker is not entitled to remuneration or social security contributions for the period between the date of termination of employment and the date of rehiring.

2. Dismissal which is Null and Void

Discriminatory dismissal deserves special mention, because the reasons motivating it affect the principle of equality laid down in the Italian Constitution (e.g. trade union membership, political and religious reasons, language, disability, age, sexual orientation and personal belief). Discriminatory dismissals can be ascribed to the general notion of discriminatory practice. The discriminatory character

of the dismissal adds up to the employer's failure to provide a just cause. Discriminatory dismissal is null and void irrespective of the reasons motivating it and entails that the worker is reinstated and fully compensated under Article 18 and Legislative Decree no. 23/2015, and irrespective of the number of workers employed at the company. Besides discriminatory dismissal, there are other cases in which the dismissal can also be null and void, for example when the employer terminates a worker during maternity or on his/her wedding day.

3. Dismissal for Reasons Objectively Justified

According to law, reasons which are objectively justified include "those related to production, work organisation and its functioning". The reasons related to production include office and business unit closure and workers' dismissal, as well as the abolishment of one or more positions. The dismissal linked to work organisation concerns new workload redistribution among a lower number of workers, while that concerning the functioning of work organisation can include the certified inability of the worker carrying out the tasks assigned. In order to evaluate the existence of a reason objectively justified, the first problem that arises is whether the tribunal can challenge the employer's choice, i.e. the economic, organisational, or social advisability of this decision. This possibility is not provided by case law, because the Italian Constitution protects private economic enterprise under par. 1 of Article 41. This point is reasserted in Article 30 of Law no. 183/2012, establishing that when legislation lays down general provisions also in relation to termination of employment "judicial control is limited to assessing compliance with general rules, their legitimacy and cannot question technical, organisational and production evaluations made by the employer". The tribunal must only ensure:

- the accuracy of the reasons provided;
- that the employer could not assign other tasks to the worker within the same company.

Case law usually specifies the objective reasons for the dismissal also when the worker has been terminated due to the impossibility of carrying out work. One case that bears relevance is the one concerning the worker's physical or psychological unsuitability, as in this case the worker cannot be dismissed if he can be assigned to another position, even of a lower level, while keeping the same remuneration. A further case concerns an employer who is disqualified from driving or when they have their authorisations suspended so they cannot work. Finally, this rule applies in the event of a worker's prolonged

detention, so the employer does not have any interest in him resuming work again.

3.1. Procedural Aspects

The employer with less than 15 employees who want to terminate staff hired before 7 March 2015 for economic and organisational reasons must comply with a specific dismissal procedure, as laid down in Article 7 of Law no. 604 of 15 July 1996. Prior to that, the employer must send a communication to the worker and the Labour Inspectorate operating in the area where the company has its headquarters or where the business unit is located. In the statement, the employer expresses the intention to terminate the worker and the reasons justifying the decision, along with measures put in place to help the worker concerned find a new job (if any).
Within 7 days of receiving this communication, the Inspectorate convenes a meeting with the employer and the worker in order to seek the amicable settlement of the dispute before the local conciliation committee. During the meeting, the parties – which can be assisted by representatives from the union or the employers' associations of which they are members, a lawyer or a professional specialised in employment matters – along with the commission, evaluate alternatives to termination. This procedure must end by 20 days from the day on which the Inspectorate convened the parties. Should the attempt at reconciliation be unsuccessful, the employer can dismiss the worker. It might be useful to remember that this procedure is mandatory only for workers hired before 7 March 2015 – as Article 18 of the Workers' Statute does not apply – and not to staff covered by Legislative Decree no. 23/2015.

3.2. Statutory Conciliation Procedures

As a form of out-of-court settlement, Article 6 of Legislative Decree no. 23/2015 specifies that workers hired after 7 March 2015 can be offered an amount of money within 60 days of termination. This sum – which is not considered as taxable income and for which no social security contributions should be paid – is equal to one month's pay for each year of employment and should be between 3 and 27 months' pay, to be paid to the worker by means of a bank draft.

3.3. The Employer's Duty of *Repêchage*

As said, the employer must prove that they could not assign another task to the dismissed worker in the company. Case law considers this

the way to strike a balance between the employer's freedom to conduct business and the worker's interest to keep their job. Analysing case law, one might note that the possibility to give workers another task is limited to the assignments indicated by workers themselves when appealing the employer's decision. The tasks the worker might be given must be of the same level as – or of the level immediately lower than – those abolished following the employer's decision leading to dismissal.

4. Collective Dismissals

The employer can initiate collective dismissals when:

a) is not sure to be able to hire back all workers placed on temporary unemployment benefits or to implement alternative measures (par. 1, Article 4, Law no. 223/1991);

b) following business activity reduction or transformation, cannot retain the services of some workers or the business units where they are employed (par. 1, Article 24 of Law no. 223/1991).

4.1. The Minimum Number of Workers

Par. 1, Article 24 of Law no. 223/1991 specifies that in order for a collective dismissal to take place, it must occur in companies with more than 15 employees, including executives, and that at least 5 employees are terminated in each business unit or more business units within the same province following work or activity reduction or transformation.

When does collective dismissal take place?	**Minimum number of employees necessary to initiate collective dismissal (during a period of 120 days)**
In companies with more than 15 employees	

4.2. Consultation with Trade Unions

The first aspect to comply with when starting a collective dismissal procedure is to provide trade unions, also those operating at company level, with a written statement in which the employer

informs them of their decision of making workers redundant. If no unions operate in the company, the communication must be sent to the most representative trade unions at national level. The following is the information that has to be provided in the statement:

a) the reasons leading to redundancies;
b) the technical, organisation and productive reasons for which it was not possible to lay down measures to avoid dismissal;
c) the number of workers who face termination, their employment status and role within the company;
d) the measures laid down to deal with the social consequence of the dismissal.

Communication Content and Requirements			
Reasons causing the dismissal	Indications of the technical, organisational, and production reasons which make it impossible to find an alternative to dismissal	Indication of the number of workers facing dismissal (together with their professional profile) and of the total number of employees in the company	Indications of the measures to be implemented to face the social consequences of the dismissal (if any).

The second step concerns consultation. After 7 days of receiving the employer's communication – and upon request of representatives of both the employer and the employees – the parties convene to examine the reasons leading to the current situation. They also look into the possibility to give staff other tasks within the same company, through more flexible work arrangements, by concluding agreements allowing for demotions or lower remuneration – thus derogating from Article 2013 – or by making use of temporary unemployment benefits. Consultation must end within 45 days from the day the communication was received, or within 30 days if the company is facing insolvency. If agreement is reached by then, consultation can be ended. Otherwise, a further administration procedure must take place before public entities tasked with carrying out a mediation role (e.g. the provincial employment office, regional authorities if termination concern plants operating in different provinces, or the Ministry of Labour if termination affects plants in different regions). This latter procedure must be concluded within 30 days. Should the parties fail to reach agreement, they have the right to decide how to proceed, i.e. they can start termination (the employer) or industrial action (the employees).

4.3. Sanctions in the event of Unfair Collective Dismissals

Failing to comply with the procedural requirements laid down in Law no. 223/1991 or to provide the worker with a written statement detailing the selection criteria might lead workers to challenge collective dismissal in court. Sanctions for unfair collective dismissals vary, depending on the procedural flaws and the date of recruitment:

a) for workers hired before 6 March 2015, the sanctions contained in Article 18 of the Workers' Statute apply;

b) in the event of failing to comply with dismissal procedures – also when the worker to be terminated is an executive – the employer has to pay compensation worth between 12 and 24 months' pay, which is calculate on the worker's last gross salary;

c) failing to provide the worker with a written communication will result in the worker's reinstatement, pursuant to par 1-3, Article 18 of the Workers' Statute;

d) any breach concerning workers' selection criteria will result in the worker's reinstatement, as governed by par. 4, Article 18 of the Workers' Statute;

e) for workers hired after 6 March 2015 – who have concluded the so-called employment contract with rising protection – violations concerning both procedural requirements and selection criteria will result in compensation pursuant to Legislative Decree no. 23/2015. Specifically, workers will be entitled to 2 months' pay for each year of employment (between 4 and 24 months' salary). Reinstatement applies in the event of the employer's failure to provide written notification of the dismissal.

5. Halting Individual and Collective Dismissals during the Health Emergency

COVID-19 rapid outbreak caused significant economic disruption, especially in the tourist sector. Many employers terminated staff as early as February 2020 because of the company's reduced turnover. In order to limit the number of dismissals for economic reasons and to encourage employers to resort to remote work or temporary unemployment benefits, the government imposed a 60-day freeze on union procedures concerning collective dismissals, with the 60-day suspension which also applied to dismissals for economic or

organisational reasons, irrespective of company size (Article 46 of Decree Law no. 18 of 17 March 2020).

Under Article 4, 5, and 24 of Law no. 223 of 23 July 1991, the employer cannot start collective dismissal procedures prior to 16 May 2020. Article 46 also regulates ongoing dismissal procedures, setting forth that suspension applies to those initiated after 23 February 2020. The article also establishes that, in compliance with the 60-day freeze, "the employer cannot terminate staff for objective reasons, pursuant to Article 3 of Law no. 604 of 15 July 1996, regardless of the number of workers employed". Prohibition on dismissal does not apply to executives.

V. DISMISSAL PROCEDURES IN POLAND

1. Dismissals in Poland

Like other EU countries, Poland regulates both economic and disciplinary dismissals, namely:

a) disciplinary dismissal;
b) dismissal for justified objective reasons;
c) collective dismissal.

2. Disciplinary Dismissal

In order for the disciplinary dismissal to be fair, the employer must inform the worker in writing about the decision to terminate the employment relationship. The communication must include information concerning the employee's right to challenge this decision in court, along with the reasons motivating the dismissal. The worker can be terminated without giving notice when:

- a serious breach is committed by the worker in relation o tthe employment contract or the obligations laid down therein;
- the worker commits an offence and must serve a sentence for a crime or the sentence prevents further employment;
- due to his behaviour, the worker has the licence necessary to perform work suspended.

In all the cases referred to above, the employer must inform in writing the worker's union operating at the company about the decision of terminating the contract without giving notice, providing reasons for it.

3. Dismissal for Justified Objective Reasons

If the employer wants to terminate the worker due to objective reasons, he must provide a written statement including information about the worker's right to appeal this decision in court. If the employer to be dismissed is on an open-ended contract, the reasons motivating this decision must be provided, too. The trade union operating at the company that represents the worker must be notified in writing of the employer's intention to dismiss the worker on an open-

ended contract, giving notice and the reasons causing the dismissal. The length of the notice period depends on the type of employment contract concluded by the worker. In the event of an open-ended employment contract, the notice period is equal to:

a) two weeks if the employee has been working for less than six months;
b) 1 month if the employee has been working for at least six months;
c) 3 months if the employee has been working for at least three years.

The notice period should include two or three days during which the employee is allowed to look for another job.

4. Collective Dismissal

Collective dismissals are governed by special rules, the aim of which is to regulated termination of employment not arising from disciplinary reasons. These special rules apply to companies with at least 20 workers in which collective dismissal will take place within 30 days and will concern:

a) 10 workers if the company employs between 20 and 99 workers;
b) 10% of the workforce if the company employs between 100 and 299 workers;
c) 30 workers if the company employs at least 300 workers.

Collective dismissals can take place for reasons not linked to workers themselves, i.e. the abolishment of the post, the company's organisational and production changes or other economic reasons. In the event of collective dismissal, the employer is under the obligation to consult with trade unions, providing them with the reasons for the dismissal and the number of workers that will be terminated. If no agreement is reached within 20 days, the employer must inform the relevant employment office about this decision and after 30 days the company may start termination of contracts, notice period depends on the length of service.

5. Protection against Unfair Dismissal

Some workers enjoy special protection and cannot be dismissed, namely:

- workers whose absence from work is justified;
- workers who have reached early retirement age;
- pregnant workers;

- members of staff councils and special negotiation committees;
- trade union members;
- occupational health and safety inspectors;

Nevertheless, it must be stressed that the protection enjoyed by these categories of workers is limited in the event of disciplinary or collective dismissal. Should one of the two types of dismissal referred to above take place, the employer can terminate the employee when absence from work is justified or when the employee qualifies for early retirement.

6. Appealing against Dismissal in Court

The appeal to challenge the employer's decision must be submitted to the employment tribunal within 21 days of receiving the letter concerning dismissal. After that, the employment tribunal can decide to:

a) reinstate the worker, obliging the employer to pay remuneration and social security contributions for the period he did not work;

b) establish that the dismissal was unfair and require the employer to pay compensation – from 2 weeks' to 3 months' pay – which should not be lower than the salary the worker was entitled to during the notice period.

7. Costs related to Dismissal: Aspects to be considered

The costs related to termination of employment depend on a number of factors, namely:

- the duration of the employment relationship (which affects the length of the notice period and the amount of severance pay);
- the reasons for dismissal (if these reasons do not concern the worker, the employer with more than 20 employees must pay severance pay);
- the role of trade unions (in the event of collective dismissals);
- the amount of unused leave (which must be paid in the event of termination of employment).

7.1. Severance Pay

In the event of collective dismissal – but also in some cases in which termination took place for reasons unrelated to workers – severance pay must be paid on the day following the notice period, namely**:**

- a sum which is equal to the worker's monthly remuneration, for workers with less than 2 years' service;
- a sum which is twice the worker's monthly remuneration, for workers having between 2 and 8 years' service;
- a sum which is three times the worker's monthly remuneration, for workers with more than 8 years' service.

Importantly, severance pay cannot be higher than 10 times the minimum wage.

7.2. Other Indemnities

In the event of dismissal, the worker must use unused leave by the end the notice period, provided that the employer grants leave during that period. If leave is not used before termination or prior to the end of the employment relationship, the employee is entitled to payment in lieu.

7.3. Some Examples as to How to Determine the Costs Resulting from Dismissal

The following table summarises the costs arising from terminating an employee with two years of service, who was paid the minimum wage and had 5 days of unused leave.

Pay	Severance pay	Cash equivalent	Pay during the notice period	Pay for the period prior to collective dismissal	Employers' contribu-tions	Total costs of dismissal
Collective dismissal						
2600,00 zł	2600,00 zł	616,70 zł	2600,00 zł	5200,00 zł	1836,36 zł	**12853,06 zł**
Individual dismissal for reasons not related to the employee						
2600,00 zł	2600,00 zł	616,70 zł	2600,00 zł	0,00 zł	662,96 zł	**6479,66 zł**
Individual dismissal						
2600,00 zł	0,00 zł	616,70 zł	2600,00 zł	0,00 zł	662,96 zł	**3879,66 zł**

Below another table is provided concerning the costs resulting from dismissing an employee with ten years' service who was paid the minimum wage and had 5 days of unused leave.

Pay	Severance pay	Cash equivalent	Pay during the notice period	Pay for the period prior to collective dismissal	Employers' contribu-tions	Total costs of dismissal
Collective dismissal						
5331,47 zł	15994,41 zł	1264,58 zł	15994,41 zł	10662,94 zł	5963,21 zł	**49879,55 zł**
Individual dismissal for reasons not related to the employee						
5331,47 zł	15994,41 zł	1264,58 zł	15994,41 zł	0,00 zł	3557,08 zł	**36810,48 zł**
Individual dismissal						
5331,47 zł	0,00 zł	1264,58 zł	15994,41 zł	0,00 zł	3 557,08 zł	**20816,07 zł**

8. Amendments to Legislation Regulating Dismissal following the COVID-19 Health Emergency

During the COVID-19 outbreak, the Polish government attempted at preserving existing jobs. For this reason, legislation regulating dismissals was amended so that termination of employment was prohibited during the period in which employers benefitted from financial resources aimed at job preservation. This provision did not apply to disciplinary dismissal.

Your **Fiabilis CG local contacts** to know more about this report:

BELGIUM & FRANCE
Bd de l'Humanité, 233 / b 10 – 1620 Drogenbos
info@fiabilis.be – T. +32 (0)2 73 50 375

ITALY
Via B. Rucellai, 37/A - 20126 Milano – Italia
contattaci@fiabilis.it – T. +39 (0)2 36576560

POLAND
Aleja Niepodległości 124/12 - 02 – 577 Warszawa
biuro@fiabilis.pl - T. +48 22 400 30 83

SPAIN
Avenida de la Albufera 321, 5 planta - 28031 Madrid
info@fiabilis.es - T. +34 91 328 12 85

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FINISHED EDITING IN JULY 2020

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